

FILED 10 MAY 27 16:50 USDC-ORM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

| | | |
|-------------------------|---|---------------------|
| MARK DANIEL KITZMAN, |) | |
| |) | Civil No. 10-415-PA |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | ORDER |
| U.S. BUREAU OF PRISONS, |) | |
| et al., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

PANNER, District Judge.

Plaintiff initiated the current action with a Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241. He alleges that defendants are improperly blocking certain telephone numbers on his call list, and he seeks a court order enjoining this practice.

Plaintiff's challenge pertains to the conditions of his confinement, not the execution of his sentence. For this reason,

28 U.S.C. § 2241 is not an appropriate remedy, and this case is more accurately characterized as an action brought pursuant to *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). See *Hernandez v. Campbell*, 204 F.3d 861, 864 (9th Cir. 1999) (28 U.S.C. § 2241 petition is the proper method for a federal prisoner to challenge the manner, location, or conditions of a sentence's execution). Accordingly, the filing fee for this case is \$350.00. 28 U.S.C. § 1914(a).

Plaintiff has not paid the \$350.00 filing fee, nor has he moved to proceed *in forma pauperis*. Although plaintiff has provided the court with a copy of a request for the withdrawal of the \$5.00 filing fee, the court has no record of any such payment., and any such payment would be insufficient for this *Bivens* action. Accordingly, IT IS ORDERED that plaintiff shall submit a \$350.00 filing fee or an application to proceed *in forma pauperis* within 30 days of the date of this order. Plaintiff's failure to do so will result in the dismissal of this action. Plaintiff is ADVISED that if he is granted leave to proceed *in forma pauperis*, the full filing fee of \$350.00 will be collected from his prison trust account over time as funds become available.

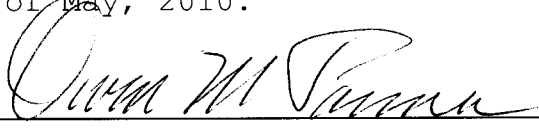
CONCLUSION

Should plaintiff wish to continue with this *Bivens* action, he must either pay the full filing fee of \$350.00, or move to proceed *in forma pauperis*. Plaintiff is ADVISED that if he is granted

leave to proceed *in forma pauperis*, the full filing fee of \$350.00 will be collected from his prison trust account over time as funds become available. Plaintiff's failure to comply with this Order within 30 days will result in the dismissal of this case without prejudice.

IT IS SO ORDERED.

DATED this 26 day of May, 2010.



Owen M. Panner
United States District Judge